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Richard C. Duncan

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Attorney-General

1953

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CONCORD, N.H.

Honorable Bert Eagan,
Administrative Assistant to the Governor,
State House
Concord, New Hampshire

Dear Bert:

Issue of 1950, chapter 5, Part 25, section 3
provides as follows:

"The governor and council are hereby authorized to take all necessary action to carry out the provisions of this act. Whenever it shall appear in the operation hereof that the assignment of, or failure to assign, functions, powers, duties, records, property and personnel under the said provisions result in defeating rather than in furthering the purposes of economy and efficiency which this act is intended to promote, then the governor and council are hereby authorized to take such immediate action by executive order as may be necessary to carry out said purposes and correct said deficiencies."

From the foregoing, at first glance, it might appear that the Governor and Council are authorized to assign the function of motor boat registration to the Commissioner of Motor Vehicles. But, a careful examination, in my opinion, shows that this is stretching the meaning of the section too far.

The Constitution of New Hampshire clearly prescribes separation of powers. The executive may not take unto itself legislative power. Any delegation of legislative power to an executive agency can only be under a formula (often times referred to as "legislative standard") which so clearly sets forth the limitations on executive power as to establish satisfactorily that the legislature has not actually delegated any power to the executive to legislate. R.L., c. 381, assigns to the Public Utilities Commission the duty of private power boat registration.

Honorable Bert Torgue

- 2 -

October 27, 1953

Changes in the Public Utilities Commission, its scope, powers and duties, contemplated and mandated enactment of Laws of 1950, chapter 5. Since the Reorganization Act did not "reorganize" the Public Utilities Commission, it is not possible to extend the executive power authorized by section 3 to it. This would be particularly true if the claim of propriety of extension was founded on the contention that the assigned duty (private power boat registration) had not previously been given to the Commissioner of Motor Vehicles in the Reorganization Act itself. In retrospect, it is clear that it was never even considered since it was a function of a state commission not reorganized. Furthermore, to the extent that section 3 might be interpreted to purport to authorize such an executive order, it would in my opinion be clearly unconstitutional for the reasons above stated.

Therefore, I must advise that in our opinion the Governor and Counsel may not transfer the function of private power boat registration to the Commissioner of Motor Vehicles but that such a change must await action of the Legislature.

Respectfully,

Louis C. Wyman
Attorney General

LCW:HP